IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 369 OF 2007

Damodar Mahadeo Pingale ... Appellant
(Orig. Plaintiff)

Versus

Shri Nathuram Damodar Pingale & Ors. Respondents

Ms. Gauri Godse, Advocate, for the appellant.

CORAM: J.H.BHATIA,J.

DATE : 20th September, 2007

P.C.

Heard learned Counsel for the appellant.

1. The appellant is the original plaintiff. The respondent No.1 is the son of the plaintiff. According to the plaintiff, on 22.2.1994, he had mortgaged the suit property in favour of defendant No.3 - Manorama, but instead of mortgage deed, the sale deed was executed and registered with an understanding that he would re-purchase the property. on 10.6.1985 the plaintiff repaid the amount to defendant No.3 and re-purchased the property to get the sale deed executed in the name of his son defendant N.1. On 15.1.1990, the defendant No.1 sold

that property to defendant No.2 under a registered sale deed. On 18.1.1991, the plaintiff filed a suit seeking declaration of his title of ownership and cancellation of the sale transaction dated 15.1.90 between the defendants Nos. 1 and 2 with other consequential reliefs. The suit was contested by the defendant No.2, who contended that he had purchased the property from defendant No.1 by paying the price and this transaction was totally independent of transaction between the plaintiff and the defendant No.3. The defendant No.2 claimed to be the bonafide purchaser for value. The defendant No.1 did not contest and he was examined as a witness by the plaintiff and the defendant No.1 supported his father. However, the trial Court rejected the plea of the plaintiff and dismissed the suit. The plaintiff preferred Civil Appeal No.94 of 1999. That appeal was also dismissed. Therefore, the plaintiff has preferred this Second Appeal before this Court.

2. There is no documentary evidence on record to show that the plaintiff had mortgaged the property in favour of defendant No.3 in 1974. The document executed by him was clearly an out-and-out sale. There is nothing to show that plaintiff redeemed that alleged mortgage by paying the amount to defendant No.3. The sale deed dated 10.6.1985 executed by defendant No.3 in favour of defendant No.1 also does not show that it was a kind of

redemption or the sale deed was executed as a part of the earlier agreement. In view of the pleading of the plaintiff, that the sale deed dated 10.6.85 records a benami transaction. According to him, he is the real owner and defendant No.1 is the benamidar. Section 3(1) of the Benami Transaction Prohibition Act, 1988 clearly states that no person shall enter into any benami transaction. Exception is made only in respect of wife or unmarried daughter. Section 3(3) makes benami transaction punishable with imprisonment. Sec. 4 provides that "no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property." Admittedly, the plaintiff and defendant No.1 were not members of joint family when the property was purchased in the name of defendant No.1 on 10.6.1985. In such circumstances, the suit of the plaintiff is not tenable under the law.

3. In view of the above circumstances, I find no fault with the dismissal of the suit of the plaintiff. No substantial question of law is involved.

Therefore, the Appeal stands dismissed.

(J.H.BHATIA,J.)